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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/726,256	12/02/2003	John McDonald	FCMCCG.002DV1	3528
20995 7590 05/21/2007 KNOBBE MARTENS OLSON & BEAR LLP 2040 MAIN STREET FOURTEENTH FLOOR IRVINE, CA 92614			EXAMINER POLLICOFF, STEVEN B	
			ART UNIT 3728	PAPER NUMBER
			NOTIFICATION DATE 05/21/2007	DELIVERY MODE ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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**Office Action Summary**

Application No.

10/726,256

Applicant(s)

MCDONALD ET AL.

Examiner

Steven B. Pollicoff

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 26 April 2007.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 33-41 and 43-46 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 33-41 and 43-46 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date 4/26/07.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Request for Continued Examination***

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 4/26/07 has been entered.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 33, 34 and 43 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hagedon et al., (US Pat 5,405,000) in view of Hojnacki et al., (US Pat 5,183,159)

With respect to claim 33, Hagedon discloses a packaging assembly comprising a first frame member (Hagedon Fig 8 ref 54) having first and second free edges, a second frame member (ref 53) having third and fourth free edges, a first retention member (Fig 10 ref 51) extending between the first and second free edges and comprising a sheet material, a second retention member (not labeled but see lower portion of ref 51 below product; ref 52) extending between the third and fourth free edges and comprising a sheet material, the first and second frame members being configured to nest with each other (at ref 65 and 69). Hagedon does not disclose that the first frame member and the first retention member are engaged with each other to form a first subassembly and the second frame member and the second retention member are engaged with each other to form a second subassembly, the first and second subassemblies being configured to nest together. However, Hojnacki discloses a suspension package (Hojnacki Fig 4 and 5) having first and second frame members (Fig 4 ref 32) engaged with first and second retention members (18), respectively, to form first and second subassemblies (12). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to replace the pouch of Hagedon with retention members already attached to the frames forming subassemblies, as taught by Hojnacki, for the purpose of reducing package assembly time. Instead of obtaining a pouch, placing the item in the pouch and then placing the pouch within the framed package, the item can be placed directly onto the retention member within the package.

With respect to claim 34, Hagedon discloses that the first and second retention members are substantially resilient (i.e. ref 51 is made of plastic and is placed in tension

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when the case/frame closes), the first and second frame members being substantially rigid (Fig 10 generally).

With respect to claim 43, Hagedon disclose that the first frame member comprises first and second peripherally extending structures supporting the first and second free edges (Fig 8 ref 69), respectively, the second frame member comprising third and fourth peripherally extending structures supporting the third and fourth free edges (ref 65), respectively.

Claim 35 is rejected under 35 U.S.C. 103(a) as being unpatentable over Hagedon et al., (US Pat 5,405,000) in view of Hojnacki et al., (US Pat 5,183,159) as applied to claim 33 above and further in view of Warburton (US Pat 5,046,659).

With respect to claim 35, Hagedon as modified discloses a first portion extending from the first free edge (Fig 8 ref 69). Hagedon as modified does not disclose that the first portion is tapered. However, Warburton discloses first and second tapered portions extending longitudinally from first and second free edges (Warburton Fig 5 ref 40 and 41; see also Fig 7 and 7a at ref 40c and 40d). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the first portions of Hagedon as modified to make them tapered, as taught by Warburton, for the purpose of creating an easier and more secure latching engagement (column 4, lines 5-8).

Claims 36-41 and 44-46 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hagedon et al., (US Pat 5,405,000) in view of Hojnacki et al., (US Pat 5,183,159) and Warburton (US Pat 5,046,659).

With respect to claim 36, Hagedon discloses a packaging assembly comprising a first frame member (Hagedon Fig 8 ref 54) having first and second free edges, a second frame member (ref 53) having third and fourth free edges, a first retention member (Fig 10 ref 51) extending between the first and second free edges and comprising a sheet material, a second retention member (not labeled but see lower portion of ref 51 below product, ref 52) extending between the third and fourth free edges and comprising a sheet material, the first and second frame members being configured to nest with each other (at ref 65 and 69). Hagedon also discloses a first portion extending from the first free edge (Fig 8 ref 69), a first wall (65) extending from the third free edge and that the first portion is configured to receive the first wall (Fig 10 at ref 65 and 69). Hagedon does not disclose that the first portion is tapered or that the first wall is inclined. However, Warburton discloses latching means including a first tapered portion and a first inclined wall, both configured to receive each other (Warburton Fig 7 and 7a ref 40 and 41, respectively). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the first portion and first wall of Hagedon to make the portion tapered and the wall inclined, as taught by Warburton, for the purpose of creating an easier and more secure latching engagement (column 4, lines 5-8).

Hagedon also fails to disclose that the first frame member and the first retention member are engaged with each other to form a first subassembly and the second frame member and the second retention member are engaged with each other to form a second subassembly, the first and second subassemblies being configured to nest

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together. However, Hojnacki discloses a suspension package (Hojnacki Fig 4 and 5) having first and second frame members (Fig 4 ref 32) engaged with first and second retention members (18), respectively, to form first and second subassemblies (12). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to replace the pouch of Hagedon with retention members already attached to the frames forming subassemblies, as taught by Hojnacki, for the purpose of reducing package assembly time. Instead of obtaining a pouch, placing the item in the pouch and then placing the pouch within the framed package, the item can be placed directly onto the retention member within the package.

With respect to claims 37 and 44, Hagedon discloses that the first and second ends extend longitudinally having portions disposed at longitudinal ends (Fig 8 ref 69) and that the first and second walls form a portion of the third and fourth peripherally extending structures. Hagedon as modified by Warburton as described above in the rejection of claim 36 discloses that it would be obvious for those portions to be tapered and the walls to be inclined.

With respect to claim 38, Hagedon discloses all the limitations of the claim except that each of the first and second free edges including tapered portions disposed at opposite longitudinal ends thereof, and wherein the assembly additionally comprises third and fourth inclined walls supporting the third and fourth free edges, respectively the tapered portions being configured to receive the inclined walls in nesting engagement. However, Warburton discloses first and second tapered portions extending longitudinally from the first and second free edges (Warburton Fig 5 ref 40

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and 41; see also Fig 7 and 7a at ref 40c and 40d) and third and fourth inclined walls extending from the third and fourth free edges (Fig 5 ref 41'; see also Fig 7 and 7a ref 41a',c',d'). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the longitudinally extending portions and walls of Hagedon to make them tapered and inclined, as taught by Warburton, for the purpose of easier and more secure latching engagement (column 4, lines 5-8).

Hagedon also fails to disclose that the first frame member and the first retention member are engaged with each other to form a first subassembly and the second frame member and the second retention member are engaged with each other to form a second subassembly, the first and second subassemblies being configured to nest together. However, Hojnacki discloses a suspension package (Hojnacki Fig 4 and 5) having first and second frame members (Fig 4 ref 32) engaged with first and second retention members (18), respectively, to form first and second subassemblies (12). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to replace the pouch of Hagedon with retention members already attached to the frames forming subassemblies, as taught by Hojnacki, for the purpose of reducing package assembly time. Instead of obtaining a pouch, placing the item in the pouch and then placing the pouch within the framed package, the item can be placed directly onto the retention member within the package.

With respect to claim 39, Hagedon discloses that at least one of the tapered portions and the inclined walls are configured such that the first and second retention



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members are deflected inwardly when the tapered portions and the inclined walls are nested (Hagedon column 4, lines 40-49; see also column 6, lines 11-13).

With respect to claim 40, Hagedon discloses that a first recessed area (Hagedon fig 8 ref 58) of the first frame member disposed between the first and second free edges and a second recessed area (Fig 10 not labeled but see open interior below ref 51) of the second frame member disposed between the third and fourth free edges.

With respect to claim 41, Hagedon discloses that the first and second retention members are deflected toward the first and second recessed areas, respectively, when the tapered portions and the inclined walls are nested (Fig 10 generally).

With respect to claim 45, Hagedon discloses a packaging assembly comprising a first frame member having first and second free edges, a second frame member having third and fourth free edges, a first retention member extending between the first and second free edges and comprising a sheet material, a second retention member extending between the third and fourth free edges and comprising a sheet material, the first and second frame members being configured to nest with each other, wherein the first frame member comprises first and second peripherally extending structures supporting the first and second free edges, respectively, the second frame member comprising third and fourth peripherally extending structures supporting third and fourth free edges, respectively (see obvious rejection of claims 33 and 43 above). Hagedon does not disclose that the assembly additionally comprises tapered portions formed on the opposite ends of each of the first and second free edges, and at least first and second inclined walls forming a portion of the third and fourth peripherally extending

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structures, respectively, and wherein the tapered portions extend along a first angle of inclination, the first and second inclined walls extending along a second angle of inclination that is approximately equal to the first angle of inclination. However, Warburton discloses tapered portions (at the peripherally extending structures) formed on the opposite ends of each of the first and second free edges (Fig 5,7,7a at ref 40) and at least first and second inclined walls (at the other peripherally extending structures) forming a portion of the third and fourth peripherally extending structures (at ref 41'), respectively, and wherein the tapered portions extend along a first angle of inclination (40d), the first and second inclined walls extending along a second angle of inclination (41d') that is approximately equal to the first angle of inclination. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the peripherally extending portions and walls of Hagedon to make them tapered and inclined, as taught by Warburton, for the purpose of easier and more secure latching engagement (column 4, lines 5-8).

Hagedon also fails to disclose that the first frame member and the first retention member are engaged with each other to form a first subassembly and the second frame member and the second retention member are engaged with each other to form a second subassembly, the first and second subassemblies being configured to nest together. However, Hojnacki discloses a suspension package (Hojnacki Fig 4 and 5) having first and second frame members (Fig 4 ref 32) engaged with first and second retention members (18), respectively, to form first and second subassemblies (12). Therefore, it would have been obvious to one having ordinary skill in the art at the time

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the invention was made to replace the pouch of Hagedon with retention members already attached to the frames forming subassemblies, as taught by Hojnacki, for the purpose of reducing package assembly time. Instead of obtaining a pouch, placing the item in the pouch and then placing the pouch within the framed package, the item can be placed directly onto the retention member within the package.

With respect to claim 46, it would have been an obvious matter of design choice to have the peripherally extending structures triangular in cross section as opposed to rectangular, since such a modification would have involved a mere change in the shape of a component. A change in shape is generally recognized as being within the level of ordinary skill in the art. In re Dailey 149 USPQ 47.

### ***Response to Arguments***

Applicant's arguments with respect to claims 33-41 and 43-46 have been considered but are moot in view of the new ground(s) of rejection.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Steven B. Pollicoff whose telephone number is (571)272-7818. The examiner can normally be reached on M-F: 7:30A.M.-4:00P.M.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mickey Yu can be reached on (571)272-4562. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for


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published applications may be obtained from either Private PAIR or Public PAIR.

Status information for unpublished applications is available through Private PAIR only.

For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

SBP 5/2/07  
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